

## BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

**SHERIE BLACK-HUNT**

Claimant

V.

**GENERAL MOTORS CORPORATION**

Self-Insured Respondent

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)  
) Docket Nos. 268,530 & 268,531  
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### **ORDER**

Self-Insured Respondent requests review of Administrative Law Judge Kenneth J. Hursh's December 10, 2014 preliminary hearing Order. Michael Wallace, of Shawnee Mission, appeared for claimant. Elizabeth R. Dotson, of Kansas City, appeared for respondent. This appeal from a post-award preliminary hearing proceeding for medical benefits has been placed on the summary docket for disposition without oral argument and will be decided by one Board Member.

The record on appeal is the same as that considered by the judge and consists of the September 17, 2014 preliminary hearing transcript and exhibits thereto, and the December 10, 2014 motion hearing transcript and exhibits thereto, in addition to all pleadings contained in the administrative file.

### **ISSUES**

The judge ordered respondent to provide tooth extractions which are necessary before claimant can proceed with knee replacement surgery to cure and relieve the effects of her work injury.

Respondent requests the Order be reversed. Respondent argues the judge erred in concluding claimant's current need for tooth extractions is needed to cure and relieve the effects of her work injury. Respondent argues claimant's need for tooth extractions is unrelated to her work injury and rather due to her preexisting tooth decay. Claimant argues the Board lacks jurisdiction to review this appeal because medical treatment is not one of the issues set forth in K.S.A. 44-534a(a)(2).

The issue is: does the Board have jurisdiction to review respondent's appeal?

### **FINDINGS OF FACT**

Claimant has two separately docketed claims. Docket No. 268,530 concerns injuries to her right knee, hip and back on February 1, 2001. Docket No. 268,531 involves a right knee injury on September 7, 2000. Both claims were settled on September 15, 2003, with Docket No. 268,530 being settled with all future rights left open, and Docket No. 268,531 settled on a full, final and strict compromise.

According to the parties, on February 21, 2014, Daniel Stechschulte, Jr., M.D., recommended claimant undergo a total right knee replacement. Respondent agreed to provide the recommended knee surgery, as necessary to cure and relieve the effects of the injury. Dr. Stechschulte's August 14, 2014 report also recommended a right total knee replacement. Prior to performing surgery, Dr. Stechschulte required a dental, cardiology and primary care clearance. The purpose of the dental clearance was "strictly for prevention of infection."<sup>1</sup>

On September 3, 2014, claimant filed an Application for Preliminary Hearing requesting the pre-surgical evaluations. A preliminary hearing was held September 17, 2014. The judge ordered respondent to provide pre-surgery evaluations by claimant's dentist and personal care physician.

On October 8, 2014, claimant saw Steven Pendleton, D.D.S., who noted claimant had not been to a dentist for several years. Dr. Pendleton recommended claimant have 16 teeth extracted. He referred claimant to Midwest Oral and Maxillofacial Surgery, P.A., where she was evaluated by Steven Green, D.D.S., an oral surgeon, on October 27, 2014. Dr. Green estimated removal of the teeth would cost \$4,570. In a letter dated November 4, 2014, Dr. Green stated:

It is my opinion that the proposed oral surgery, to remove all of Ms. Sherie Black-Hunt's remaining teeth, is necessary for preoperative clearance for her future knee surgery. Ms. Black-Hunt's teeth are grossly decayed and high risk of future infections.<sup>2</sup>

Claimant filed a Motion to Compel Medical Treatment which was heard on December 10, 2014. The judge's Order states, in pertinent part:

This was essentially a continuation of a September 17, 2014 preliminary hearing. At that time the court entered a preliminary order for the respondent to provide the claimant medical and dental appointments for clearance for knee replacement surgery. The order specified that if either appointment resulted in a recommendation for pre-surgery treatment, that would be an issue for future hearing.

The claimant's dental exam revealed extensive tooth decay and therefore a risk of infection if surgery was performed. The oral surgeon will not clear the claimant for surgery until all her remaining teeth are extracted. The claimant requested the employer provide the tooth extraction as treatment for the work related knee injury. The tooth extractions are estimated to cost \$4,570.00[.]

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<sup>1</sup> P.H. Trans., Cl. Ex. 1.

<sup>2</sup> M.H. Trans., Cl. Ex. 1.

The respondent argued it should not be liable for the tooth extractions because tooth decay was a preexisting condition unrelated to the work injury and because such treatment is not reasonable and necessary treatment for the work injury.

The claimant pointed out back injury cases where the employer was held liable for weight loss treatment, even though the employee's obesity was preexisting and not due to the work injury. In *Shipman v. Boeing Co.*, W.C.A.B. 1,025,046 (2010), the appeals board reversed a preliminary order denying the employee a weight loss program the physician had recommended as a means to alleviate back pain. In *Ratcliff v. Easyhome*, W.C.A.B. 1,057,822 (2012), the board affirmed a preliminary order that the employer provide the employee bariatric surgery for weight loss to allow the employee to undergo back surgery.

The claimant in the present case clearly had preexisting tooth disease, but that condition must be cured before reasonable and necessary treatment for the work injury (knee replacement) can proceed. The claimant's situation is analogous to the cases cited above. The respondent shall provide the claimant the recommended tooth extractions as authorized medical expense.

The respondent alternatively argued there are other methods to relieve the risk posed by the claimant's tooth decay, such as antibiotics. There was no evidence in the record showing any alternative treatment to tooth extractions, so the [respondent's] alternative argument was rejected.<sup>3</sup>

Thereafter, respondent filed a timely appeal.

### **PRINCIPLES OF LAW AND ANALYSIS**

The parties proceeded to a hearing utilizing the procedure under K.S.A. 44-534a, instead of the procedure provided in K.S.A. 44-510k. This appeal is not an appeal from a final order and will be heard by a single Board Member as opposed to being determined by the entire Board as if it were an appeal from a final order.<sup>4</sup>

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<sup>3</sup> ALJ Order (Dec. 10, 2014) at 1.

<sup>4</sup> *Siler v. U.S.D. No. 512*, 45 Kan. App. 2d 586, 251 P.3d 92 (2011), *rev. denied* 293 Kan. \_\_\_\_ (2012), allows use of preliminary hearing procedure in post-award proceedings. Pursuant to K.S.A. 44-556, Board decisions stemming from preliminary hearing orders are not subject to judicial review. *Siler* states, "K.S.A. 44-534a is the only statute that covers disputes regarding future medical treatment." (*Id.* at 590). Such decision overlooks the specific post-award medical statute, K.S.A. 44-510k, enacted on July 1, 2000. Such statute treats a judge's post-award medical order as a final decision that is subject to review by the full Board.

Therefore, there are two approved methods to obtain post-award medical orders: (1) orders under the post-award medical statute, K.S.A. 44-510k (subject to review by the entire Board and subject to appellate review thereafter), and (2) orders under the preliminary hearing statute, K.S.A. 44-534a (subject to review by only one Board Member and not subject to appellate review thereafter). The differing methodologies create obvious problems in terms of an aggrieved party obtaining full Board review.

Respondent's Notice of Appeal states the sole issue concerned whether the judge "erred in finding extraction of Claimant's teeth necessary to cure and relieve the effects of the injury."<sup>5</sup> Respondent's brief states, in pertinent part:

The parties stipulated that Claimant's considerable tooth decay is a preexisting condition wholly unrelated to the work event. Claimant's general health required removal of her teeth regardless of whether she required knee surgery. Clearly, Claimant's pervasive tooth decay is a preexisting condition which exists separately and apart from her need for knee surgery. Requiring Respondent to provide the teeth extractions is unreasonable and inconsistent with the purpose of the Kansas Workers Compensation Act.<sup>6</sup>

Claimant argues the Board lacks jurisdiction to consider respondent's appeal from a judge's ruling stemming from a post-award preliminary hearing. As stated above, this is not an appeal from a post-award medical award under K.S.A. 44-510k, but rather is an appeal from a preliminary hearing pursuant to K.S.A. 44-534a. The Board has jurisdiction to review decisions from a preliminary hearing in cases where a party alleged the judge exceeded his or her jurisdiction. K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified. The entire Board agrees respondent's contention that the judge erred in finding the extraction of claimant's teeth was necessary to cure and relieve the effects of an injury is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants a judge authority to decide issues concerning the furnishing of medical compensation.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.<sup>7</sup>

**WHEREFORE**, this Board Member dismisses respondent's appeal for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2015.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

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<sup>5</sup> Application for Review at 1.

<sup>6</sup> Resp. Brief at 4 (filed Jan. 8, 2015).

<sup>7</sup> See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

**SHERIE BLACK-HUNT**

**5**

**DOCKET NOS. 268,530 & 268,531**

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Honorable Kenneth J. Hursh